F. M. S REPORTS.

P. P. vs. MUSA BIN JAMAL.

[Appellate Criminal Jurisdiction (Cussen, J.)

November 11, 1940]

Road Traffic Enactment (No. 17 of 1937), section 80 (i)—No licence to use motor vehicle as stage carriage—Liability of driver.

The facts sufficiently appear from the judgment.

Held, as regards the first charge that section 80 (i) of the Road Traffic Enactment has no application to the driver of a motor vehicle as such, but is confined in its application to the person who holds or should hold a licence for the motor vehicle.

T. T. Russell, Deputy Public Prosecutor, for appellant.

Respondent in person.

Cussen, J.—This is an appeal by the Public Prosecutor against the decision of the Magistrate, Krian, in Krian Summons Cases Nos. 193 to 195 of 1940.

The accused in those cases was charged with three offences.

(1) That you on or about 10.35 a.m. 27th April, 1940, at Bagan Serai did cause a motor vehicle identification No. Pk. 7081 to be used as a stage carriage vehicle without being the holder of a licence to use it as a vehicle of that class in accordance with the provisions of Part IV R.T.E. 1937 and you have thereby committed an offence under section 80 (1) and 80 (6) punishable under section 118 (1) R.T.E. 1937.

The learned Magistrate discharged the accused on all three charges.

The petition of appeal states:—

"Your petitioner is dissatisfied with the said order on the grounds following:

(a) The Magistrate misdirected himself in law in not applying to charge No. 1 the presumptions set forth in section 113 (2) of the Road Traffic Enactment.

(b) The Magistrate misdirected himself in law in not applying to charge No. 2 the provisions of section 12 (5) of the Road Traffic Enactment."

At the end of the evidence for the prosecution, the learned Magistrate discharged the accused without calling upon him for any defence.

The accused was the driver of the motor vehicle in question. He was not the owner.

Section 80 (1) on which the first charge is laid reads as follows:—

"No person shall cause or permit a motor vehicle to be used as a stage carriage a contract carriage or a hackney carriage unless he is the holder of a licence (in this Enactment referred to as 'a public service vehicle licence') to use it as a vehicle of that class in accordance with the provisions of this Part."

Now, in my opinion, apart from any question of the presumption under section 113 (2) of the Road Traffic Enactment, referred to in the grounds of appeal, this section 80 (1) cannot in any case apply to the driver of a motor vehicle *qua* driver, for the driver as such is not the holder of the licence, of whatever kind, in respect of the motor vehicle, that licence is always in the name of the owner or of some person representing the owner in that respect. It is quite clear that if the driver merely as driver comes under this section, then any driver-employee, not being the holder of the licence for the car he is driving, commits an offence under this section.

I conclude therefore that section 80 (1) has no application to the driver of a motor vehicle as such but is confined in its application to the person who holds or should hold a licence for the motor vehicle.

Apart, therefore, from any consideration of section 113 (2) of the Enactment, I conclude that the decision of the Magistrate was correct in dismissing this charge. The appeal against this charge is dismissed.

(The rest of the judgment concerns the other two charges).

Appeal dismissed.

GOMES vs. SUBRAMANIAM.

[Appellate Civil Jurisdiction (Gordon-Smith, J.A.)

November 25, 1940]

Courts Enactment (Cap. 2), section 57, sub-sections (i) (b) and (iii)—Landlord and tenant—Jurisdiction of Magistrate's Court—Notice to quit—Waiver.

The respondent was a tenant-at-will, paying no rent, of certain lands of the appellant, held under three titles, upon which was erected a house. The appellant had given the respondent notice to quit the house and on the expiration of the notice instituted in the Magistrate's Court a suit for ejectment in respect of the house only. Subsequently to the filing of the suit the respondent requested the appellant to allow him to occupy the house for a further six months. The appellant agreed and the hearing of the suit was postponed **sine die.** The suit having been restored for hearing the respondent filed his defence in which he pleaded (a) that the Magistrate had no jurisdiction to entertain the suit because the value of the property was in excess of $500; (b) that the notice to quit was bad. The monetary value of the property was clearly in excess of the jurisdiction of the Court and no question of title was raised.

Held, that the question of jurisdiction is governed by sub-section (iii) of section 57 of the Courts Enactment (the amount of rent) and not by sub-section (i) (b) (the value of the property). Sub-sections (i) and (ii) of

section 57 have no relation to or bearing on sub-section (iii). As regards the notice to quit, it was neither withdrawn nor waived, but its operation and effect was merely suspended at the request of the defendant. Both defences therefore failed.

Cases referred to:—

(1) *Cheah Leong Keah v. Mydin bin Tamby Bappoo* (1932) M.L.J. 98; (1933) S.S.L.R. 292.

(2) *Rodd v. Archer* 104 E.R. 595.

MAGISTRATE'S CIVIL APPEAL.

B. J. P. Joaquim and *M. N. Cumarasami* for appellant.

J. T. Tosswill for respondent.

Joaquim.—This was a suit for possession of immovable property: no question of title was involved. It was therefore governed by sub-section (iii) of section 57 of the Courts Enactment. No rent was payable; the suit was therefore within that sub-section, and the Magistrate had jurisdiction.

The notice to quit the house only was good: a landlord can require possession of a part only of premises occupied at his will and without rent. There was no waiver of the notice: it was merely suspended at the request of the respondent.

Tosswill:

(1) *As to jurisdiction*

Jurisdiction of Magistrate conferred by section 57 Courts Enactment. Sub-section (i) (b) confers jurisdiction: sub-section (iii) does not add to such jurisdiction but detracts from it. Under section 54 (ii) Enactment 15/1905 (Sel.) position clear (provision same as in Straits Settlements Ordinance Cap. 10).

Law in Federated Malay States amended by Enactment 14/17—Section 54 (ii) same as present section 57 (iii). *Cheah Leong Keah v. Mydin bin Tamby Bappoo*[1] distinguished—decision under Straits Settlements Ordinance.

(2) *As to notice*

Notice to quit house only bad. Doe, *Rodd v. Archer*[2].

Fresh tenancy-at-will created after suit filed —withdrawal or waiver of previous notice.

Gordon-Smith, J.A.—Two points only arose on this appeal:—

(a) the jurisdiction of the Magistrate's Court to entertain the suit, and

(b) whether a notice to quit was good or bad.

There was no dispute as to the appellant's (the landlord) title to the premises and it was not disputed that the respondent was his tenant though only a tenant-at-will.

As to the jurisdiction, the relevant provisions are sub-section (i) (b) of section 57 of the Courts Enactment (Cap. 2) which reads as follows:—

"(b) in its civil jurisdiction, subject to the other provisions of this Enactment, hear and determine all suits within its local jurisdiction when the value in dispute does not exceed five hundred dollars",

and sub-section (iii) of the same section, which reads as follows:—

"(iii) Such Court shall have no jurisdiction in any action brought by a landlord against a tenant, or against any person holding or claiming by, through, or under a tenant, to recover possession of immovable property if the rent payable in respect of such property exceeds the sum of fifty dollars per month or six hundred dollars per annum."

The Resident of a State can, under sub-section (ii), extend this jurisdiction as regards civil matters by increasing the $500 to $1,000.

Before me it was submitted that sub-section (iii) did not add to the jurisdiction conferred by sub-section (i) (b) but detracted from or limited it. If this is so, then it is difficult to see why sub-section (iii) is included at all. It is obvious that if the annual value of premises is, say, $300 p.a., then the capital value would be far in excess of the limit imposed by sub-section (i) (b). In such case, sub-section (iii) would have no meaning or effect at all. Neither is sub-section (iii) in the form of a proviso but it is a substantive provision standing by itself.

If one transposes sub-section (iii) into an affirmative form instead of it being in a negative form the matter becomes clearer and it would then read:—

"Such Court shall have jurisdiction in any action brought by a landlord against a tenant....if the rent payable in respect of such property does not exceed $50 p.m. or $600 p.a."

I would also observe that this is the limit fixed, irrespective of any figure mentioned in either sub-section (i) (b) or in sub-section (ii). Those two sub-sections are, as I have said, separate and apart altogether and have no relation to or bearing on sub-section (iii).

It follows, therefore, that the Magistrate was wrong in holding that he had no jurisdiction to entertain the suit.

As regards the notice to quit, there is no doubt that this was served prior to the date of the plaint being issued and it was merely at the request of the defendant himself subsequently, for further time within which to make other arrangements that the hearing was postponed. In my opinion the notice given was neither withdrawn nor waived but its operation and effect was suspended, and I would repeat, at the request of the defendant himself. It follows, therefore, that, in my opinion, the defendant also fails on this submission as well.

The defendant has paid no rent at all and in fact has been in occupation with the permission of the plaintiff, for some considerable time and that permission has since been revoked. Neither is the plaintiff suing him for any rent but merely for ejectment. The defendant has raised no other matters by way of defence other than the two I have dealt with and the plaintiff is clearly entitled to an order and such will issue.

The defendant will pay the costs of the appeal and those incurred in the Court below.

Appeal allowed. Order for possession made.

HAJI SAEMAH vs. HAJI SULAIMAN.

[Orig. Civil Juris. (Horne, J.) Jan. 3, 1941]

Distribution of intestate estate—Muhammadan Law—Widow's share—Custom.

The facts appear sufficiently from the judgment.

Held, that the evidence in the suit did not clearly establish any custom that a widow is entitled to more than her Koranic share in her deceased husband's estate.

Existence of such custom reviewed.

Tengku Ismail for plaintiff.

E. A. S. Wagner for defendant.

Horne, J.—The plaintiff Haji Saemah was first married to Haji Mohamed Din bin Haji Dollah in 1915. From 1915 to 1926 she and her husband resided near Bentong. They then returned to Sumatra from whence they had previously come and there her husband died in 1933. On his death he left surviving him two widows, the plaintiff being one, and his brother, who subsequently married and later divorced the plaintiff. The defendant obtained Letters of Administration to the estate of his deceased brother, which consisted of land in Pahang of some value, and has distributed it according to Muhammadan law. The plaintiff, as widow of her first husband, claims that she is entitled to a half share of lands of her deceased first husband as "*Harta Sapencharian*" under customary law and also to her portion of the widow's share under Muhammadan law. This is alleged to be according to the custom among Malays in Pahang.

The law governing the distribution of the intestate estate of a deceased Malay is the Muhammadan law as varied by local custom.

In opening the case Tengku Ismail stated that he intended to prove that in Pahang there is a custom to the effect that a widow is entitled to a half share in such part of her deceased husband's property as has been created by their joint efforts and also to her Koranic share as widow. No question as to domicile was raised in the suit. The claim is made purely upon custom governing distribution. The spouse of a deceased person may have personal claims against the property of the deceased founded in law as apart from custom; and in this case such claims were made unsuccessfully and call for no written judgment.

Several Kathis and one Penghulu were called by Tengku Ismail to give evidence as to this custom. But only the Penghulu of Bentong was clear in stating it in the terms set out by Tengku Ismail. The Kathi of Bentong says there is no such custom and there is no established practice, but on occasion the waris of the husband and the waris of the wife come to an agreement and give the wife more than her Koranic share and up to one half. There has, he states, been no legal decision that the wife is entitled to a half by the *adat,* and in his experience distribution is made according to "*Hukum Shara*".

The Kathi of Raub stated that where it is proved that a husband and a wife join their earnings from work or trade and purchase property each is entitled to half on death or divorce; but where land is purchased by the husband and work is done on that land by his wife, that is voluntary and she has no claim other than under Muhammadan law.

The Chief Kathi of Pahang, who has lived always at Pekan, was of opinion that an increased share is sometimes given to a widow by agreement. There is no rule that the estate of a deceased spouse must be divided equally and there is no rule where registered land is concerned; but by the consent of the Koranic sharers the widow's share is sometimes increased.